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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRY BOYD WILKINSON and
SHARON WILKINSON, husband
and wife,

Plaintiffs

v.

NORFOLK SOUTHERN RAILWAY
COMPANY and CONSOLIDATED
RAIL CORPORATION,

Defendants

v.

GPS TERMINAL SERVICES, INC.,
Third Party Defendant

CIVIL ACTION

JURY TRIAL DEMANDED

JUDGE SYLVIA H. RAMBO

NO. 01-CV-1146

**MOTION OF NORFOLK SOUTHERN RAILWAY
COMPANY AND CONSOLIDATED RAIL CORPORATION,
DEFENDANTS, FOR SUMMARY JUDGMENT**

AND NOW comes NORFOLK SOUTHERN RAILWAY COMPANY and CONSOLIDATED RAIL CORPORATION, ("Railroads"), Defendants, by their attorneys NAUMAN, SMITH, SHISSLER & HALL, LLP, and moves this Court pursuant to Fed. R.Civ.P. 56 in their favor and against Terry B. Wilkinson and Sharon Wilkinson, Plaintiffs, representing in support thereof the following:

1. Plaintiffs commenced this action by the filing of a Complaint asserting two causes of action: Count I asserts a cause of action under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §51, as amended, and Count II asserts a cause of action under Pennsylvania common law negligence.

2. There are insufficient material facts which would support Plaintiffs' claim in Count I of his Complaint under the FELA, as, at the time of his alleged injury, Plaintiff was not "employed" by the Railroads, and thus, may not recover under the provisions of the FELA.

3. At the time of his alleged injury, Plaintiff was the employee of an independent contractor and was not engaged in activities which constituted a peculiar risk or special danger, thus the Railroads owed no duty to Plaintiff under Pennsylvania common law negligence standards which would entitle him to recover against the Railroads.

4. As there exists no genuine issue of material fact which would support Plaintiffs' claims under either Count I or Count II of their Complaint, summary judgment pursuant to Fed. R.Civ.P. 56 in favor of the Railroads and against Plaintiffs is required.

WHEREFORE, Norfolk Southern Railway Company and Consolidated Rail Corporation, Defendants, move for summary judgment in their favor and against Terry B. Wilkinson and Sharon Wilkinson, Plaintiffs, as to any and all claims asserted in Counts I and II of their Complaint.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: 

Craig J. Staudenmaier, Esquire
Supreme Court ID# 34996

200 North Third Street, P. O. Box 840
Harrisburg, PA 17108-0840
Telephone: (717) 236-3010
Counsel for Norfolk Southern Railway
Company and Consolidated Rail
Corporation, Defendants

Date: July 15, 2002

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CERTIFICATE OF SERVICE

AND NOW, on the date stated below, I, **Craig J. Staudenmaier, Esquire**, of the firm of Nauman, Smith, Shissler & Hall, LLP, hereby certify that I this day served the foregoing **MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION, DEFENDANTS, FOR SUMMARY JUDGMENT** by depositing a copy of the same in the United

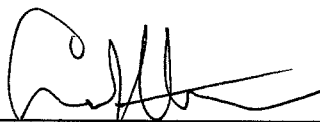
States Mail, first class, postage prepaid, at Harrisburg, Pennsylvania, addressed to the following:

Lawrence A. Katz, Esquire
Robert E. Myers, Esquire
COFFEY & KAYE
Two Bala Plaza, Suite 718
Bala Cynwyd, PA 19004

Jeffrey B. Rettig, Esquire
Hartman, Osborne & Rettig, P.C.
126-128 Walnut Street
Harrisburg, PA 17101

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: _____



Craig J. Staudenmaier, Esquire
Supreme Court ID# 34996

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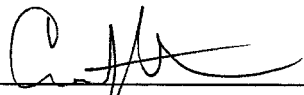
: NO. 01-CV-1146

CERTIFICATE PURSUANT TO MIDDLE DISTRICT
LOCAL RULE 7.1

I, CRAIG J. STAUDENMAIER, ESQUIRE, attorney for NORFOLK
SOUTHERN RAILWAY COMPANY and CONSOLIDATED RAIL

CORPORATION, hereby certify that I have contacted the attorney for Plaintiff, Lawrence A. Katz, of Coffey & Kaye, who does not concur in the Motion of Norfolk Southern Railway Company and Consolidated Rail Corporation, and Jeffrey B. Rettig, Esquire, of Hartman, Osborne & Rettig, P.C. who does concur in the Motion for Summary Judgment of Norfolk Southern Railway Company and Consolidated Rail Corporation.

NAUMAN, SMITH, SHISSLER & HALL, LLP

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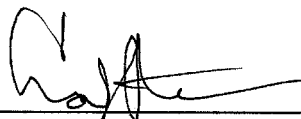
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